

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of)	
Schools and Libraries Universal Service)	CC Docket No. 02-6
Support Mechanism)	
)	
A National Broadband Plan)	GN Docket. 09-51
For Our Future)	

COMMENTS OF SUNESYS, LLC

Sunesys, LLC (“Sunesys”), by undersigned counsel, hereby submits these comments in response to the May 20, 2010 Notice of Proposed Rulemaking (“Notice”)¹ seeking comments on issues relating to the schools and libraries universal service support mechanism (“e-rate”) and how such program can be improved and modernized in the context of the Commission’s implementation of the National Broadband Plan.

Sunesys, a leading provider of digital fiber-optic communications networks capable of providing high-speed broadband access and services, has designed, built and maintained fiber optic networks for over a decade. Sunesys is a certified e-rate service provider, and currently provides e-rate supported services in Pennsylvania, New Jersey, Ohio, Maryland, Georgia, Illinois, California and Florida. Among Sunesys’ customers are approximately 180 separate school districts, comprising more than 1,300 schools nationwide who receive gigabit ethernet wide area network service capable of seamlessly converging voice, video and data and multiple other IP-based applications. As such, the issues raised in the Notice greatly impact Sunesys and its customers, and Sunesys is pleased to submit these comments to assist in the Commission’s consideration of these important issues.

I. Mitigating Waste, Fraud and Abuse Should be the Primary Consideration in Deciding Whether to Streamline the E-Rate Program With Respect to Technology Plans and the Bidding Process

The Commission has repeatedly confirmed its commitment to ensuring that the e-rate program is not subject to waste, fraud and abuse, and that e-rate funds are used appropriately and efficiently.² Indeed, the Commission has adopted special safeguards for the e-rate program to mitigate abuse, due to the fact that the needs of educational institutions are uniquely “complex and substantially different....”³ Technology plans and publicly accessible competitive bidding procedures, in particular, were implemented as a result of lengthy rulemaking proceedings taking into account issues of both public policy and administrative burden.⁴

Thus, Sunesys strongly urges that any action the Commission takes to eliminate technology plans or streamline aspects of the competitive bidding process must in no way run afoul of the guiding principles pursuant to which these requirements were adopted. In short, while there may be a perceived upside to eliminating or streamlining these e-rate requirements, the Commission should not take such action if it risks increasing the possibility for waste, fraud and abuse in any material manner.

A. Technology Plans for Priority One Applicants

Sunesys does not object to the elimination of technology plans for priority one applicants with funding requests under \$1 million if the record convincingly demonstrates that the benefits of such action outweigh the benefits, and Sunesys submits

¹ *In the Matter of Schools and Libraries Universal Service Support Mechanism; A National Broadband Plan for Our Future*, CC Docket No. 02-6, GN Docket No. 09-51, Notice of Proposed Rulemaking (May 20, 2010).

² *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6; 25 FCC Rcd 1740, ¶15; (February 19, 2010).

³ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-46, 12 FCC Rcd 8776, ¶571 (Rel. May 8, 2007).

that such finding should only occur if such applicants can demonstrate to the Commission that they have specifically and substantially addressed – in a submission approved by an appropriate state or local governing body – the requirements currently specified in Section 54.508 of the Commission’s rules.⁵

The policies supporting the adoption of technology plans remain sound today, and applicants should continue to be required to “do their homework”⁶ before availing themselves of the benefits and discounts in the e-rate program. Being able to demonstrate that the Section 54.508 Requirements have been addressed and approved at the state or local level should provide adequate assurances that at least a basic level of preparedness exists with respect to the services to be offered, and the manner in which such services will be provided. In addition, demonstrating in writing that these requirements have been approved at the state or local level retains at least some measure of transparency, which the Commission has repeatedly sought to encourage in the e-rate program.⁷

It should be noted that the Commission previously declined to eliminate the technology plan requirement for applicants seeking more than basic POTS local and long

⁴ Id at ¶573-575.

⁵ E.g., Statement of Goals and Strategy; Professional Development Strategy; Assessment of Services, Hardware and Software; Budget; Evaluation Process – referred to collectively herein as the “Section 54.508 Requirements”. 47 C.F.R. §54.508.

⁶ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-46, 12 FCC Rcd 8776, ¶573 (“[W]e concur with the Joint Board's finding that it would not be unduly burdensome to require eligible schools and libraries to “do their homework” in terms of preparing these plans.”)

⁷ See *Schools and Libraries Universal Support Mechanism*, CC Docket No. 02-6, 33 CR 680, Fifth Report and Order, ¶55 (Rel. August 13, 2004) (“To ensure transparency and consistency in the application of our rules we now modify our requirements regarding technology plan timing and content.”); See also *Schools and Libraries Universal Support Mechanism*, CC Docket No. 02-6, 48 CR 1350, Report and Order and Further Notice of Proposed Rulemaking, ¶6 (Rel. December 2, 2009) (discussing the adoption of a public

distance service, and such decision was made to ensure that applicants have “carefully considered” how they plan to deploy their service.⁸ Thus, the technology plan requirement should be abandoned at this time only if real evidence exists as to the burden of such process, and that deployment will not be materially affected. In this regard, the Commission stated in the Notice that technology plans for priority one services “may represent an unnecessarily complex and burdensome program requirement”, and may be duplicative of certain state requirements.⁹ As to whether such plans are too complex or burdensome, Sunesys has, itself, not observed instances in which applicants have asserted that technology plans are either unnecessarily complex or burdensome. However, if sufficient evidence exists regarding such complexity and burden, and applicants can demonstrate compliance with the Section 54.508 Requirements at the state or local level, then Sunesys does not object to the elimination of technology plans for priority one applicants under \$1 million, because such scenarios will ensure that applicants’ funding requests will continue to be “based on the reasonable needs and resources of the applicant and consistent with the goals of the program”.¹⁰

notice and comment process for the ESL as an effort “to provide greater transparency....”)

⁸ *Schools and Libraries Universal Support Mechanism*, CC Docket No. 02-6, 33 CR 680, Fifth Report and Order, ¶62 (Rel. August 13, 2004).

⁹ Notice at ¶18.

¹⁰ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-46, 12 FCC Rcd 8776, ¶574. Efficient allocation of e-rate funding resources is particularly critical in light of the Commission’s and the administration’s ongoing commitment to ensuring widespread broadband access and deployment in unserved and underserved areas. See also, *Notice of Funds Availability and Solicitation of Applications*, 79 Fed. Reg. 3792 (January 22, 2010) (regarding the importance of expansion of broadband). Thus, eliminating waste and ensuring efficiency in the e-rate program (via technology plans, demonstrations of compliance with Section 54.508 Requirements, or other means) will help to ensure that sufficient resources are available to applicants seeking to deploy in unserved and underserved areas.

As to whether the technology plan requirement should be eliminated for applicants that request more than a specified amount of funding for priority one services, Sunesys submits that priority one applicants with funding requests above \$1 million should continue to be required to prepare and submit e-rate technology plans. Given the inherent complexity and detail involved with respect to funding requests exceeding \$1 million, and the important policy considerations underlying the adoption of technology plans (see *supra.*), Sunesys supports the retention of the technology plan requirement for funding requests exceeding \$1 million.

B. Technology Plans for Priority Two Applicants

Due to the unique issues presented in any request for internal connections, Sunesys supports the Commission's proposal to retain the technology plan requirement for priority two service requests. In an effort to address the Commission's desire for streamlining the process and reducing applicant burden, Sunesys suggests that Commission, along with USAC, take additional steps to publicize and clarify for potential applicants the list of available priority 2 services.

C. Form 470 Posting Requirement

While Sunesys strongly supports the Commission's efforts to streamline the e-rate process, Sunesys believes that any burdens related to the Form 470 posting requirement are outweighed by the benefits associated with a consistent and transparent bidding process.

As an initial matter, because the Commission proposes to eliminate the Form 470 posting requirement only for a select portion of priority one applicants (i.e., those who are otherwise subject to state and local procurement requirements), adoption of this proposal could potentially result in an inconsistent patchwork of notice procedures at the

commencement of the critically important competitive bidding process. Given that all priority one applicants are essentially similarly situated with respect to the e-rate program, the Commission should avoid regulating such similarly situated entities in an inconsistent manner.¹¹

In addition, the transparency afforded by the Form 470 posting requirement provides significant advantages to potential e-rate providers, who currently can efficiently monitor the SLD website for postings but may not have sufficient resources to monitor scores of individual districts throughout the country for individual postings. Ensuring that the process remains centralized, consistent and transparent is, in Sunesys' view, the best way to ensure that the competitive bidding process remains "fair and open". Given that the Form 470 posting requirement supports consistency and transparency, it may very well be one of the reasons why "there have been relatively few instances of alleged waste, fraud, or abuse associated with priority one requests."¹² Unless the record convincingly demonstrates otherwise, these potential benefits weigh in favor of retaining the Form 470 posting requirement.

II. Requiring On-Line Filing of Forms

Sunesys agrees with the Commission's proposal to require the on-line filing of Forms 470 and 471, to improve the efficiency of submission and processing of these forms. In addition to potential administrative costs savings, such procedures could and should be designed with "fail safe" mechanisms that prevent errors resulting from missed or incomplete data entries.

¹¹ See *Melody Music, Inc. v. FCC*, 345 F.2d 730 (D.C. Cir. 1965).

III. Wireless Services Outside of School

Sunesys supports the Commission's proposal to allow full e-rate funding for wireless Internet access service used with portable learning devices that are used off premises. As Sunesys has previously submitted to the Commission in the context of the National Broadband Plan proposals, the Commission should encourage universal student access to advanced education-related on-line content and resources. In this regard, it is not enough to simply deploy networks *capable* of accessing advanced on-line learning resources, schools and districts must be strongly encouraged to *actually provide* such content to all or a substantial majority of students.¹³ A good way to accomplish this is by extending e-rate funding for remote student access, including access by wireless devices.

IV. Expanded Access to Low-Cost Fiber

Sunesys is in favor of cost-efficient options for recipients of e-rate funding, and is generally in favor of the Commission allowing for the funding of dark fiber as a priority one service. As the Commission suggests, fiber networks are widely used in the public and private sectors. As such, it makes sound policy to make dark fiber available to recipients as an option when developing their own networks. However, Sunesys believes that telecommunications carriers are the preferred lessor of dark fiber for recipients of e-rate funding. Non-carriers (such as municipalities) may not provide the best service option and, in some instances, may thwart the spirit of the rules governing e-rate funding.

¹² Notice at ¶23.

¹³ See Comments of Sunesys, LLC – NBP Public Notice #15, *In the Matter of Broadband Needs In Education, Including Changes To E-Rate Program To Improve Broadband Deployment*, GN Docket Nos. 09-47, 09-51, 09-137, CC Docket No. 02-6, WC Docket No. 05-195 (filed November 20, 2009).

Telecommunications carriers generally have the ability and resources available to best support a recipient's needs, including the need for dark fiber.¹⁴

Telecommunications carriers have the experience and therefore the immediate ability to advise recipients as to the best ways to utilize the fiber, based upon the recipient's specific needs. Generally, telecommunications carriers have dedicated personnel available who are able to make accurate evaluations as to how much dark fiber will be needed to accomplish a particular goal as well as to minimize the cost for such service.¹⁵ Further, telecommunications carriers are in the best position to reduce the amount of time for build-outs, because telecommunications carriers routinely provide build-outs for their own customers. Third parties (including, for example, municipalities) may not have this experience, and therefore may be less efficient, and ultimately less cost-effective, due to either overestimating or underestimating the needs of e-rate applicants.

Through the bidding process, e-rate applicants are required to objectively evaluate each carrier's service offerings and pricing. However, if a third-party non-carrier, like a municipality, has bid on a project, the recipient may feel pressured to utilize that non-carrier because of its prior existing relationship to the recipient. By way of an example, a school may be compelled to select its municipality as its vendor for dark fiber, because

¹⁴ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-46, 12 FCC Rcd 8776, ¶481 (“By way of example, we also note that the federal procurement regulations (which are inapplicable here) specify that in addition to price, federal contract administrators may take into account factors including the following: prior experience, including past performance; personnel qualifications, including technical excellence; management capability, including schedule compliance; and environmental objectives.”)

¹⁵ See 47 CFR §54.511(a), which requires applicants to “carefully consider all bids submitted and must select the most cost-effective service offering. In determining which service offering is the most cost-effective, ***entities may consider relevant factors other than pre-discount process***, but price should be the primary factor considered.” (emphasis added)

the municipality controls the school's funding, even though (i) the costs may be the same if an outside telecommunications carrier is used, and (ii) even if the telecommunications carrier can provide more expertise, i.e. more "bang for the buck" than the non-carrier. The use of a non-carrier governmental entity or anchor institution as a dark fiber vendor could lead to the perception of self-dealing and an impression that the bidding process was not fair and impartial.

To that end, telecommunications carriers offer the best protection against the possibility of fraud and waste. USAC has, rightfully so, promoted efficient use of e-rate funding by its recipients.¹⁶ Telecommunications carriers generally are non-governmental entities that are subject to Commission and state public utility commission regulation, unlike non-carriers. Further, telecommunications carriers regularly provide reports and financial documentation to the applicable regulator at regular intervals.¹⁷ Compliance is an integral part of the e-rate program, and ensures that monies provided to recipients under the program are used efficiently.¹⁸ Non-carriers may not be accustomed to the requirements and modes of reporting, thereby potentially impacting the ability of USAC to ensure that funds received under the program are utilized properly, as is USAC's mandate.

¹⁶ *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Second Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd. 9202, 9224, para. 65 (2003) (discussing generally USAC's authority to combat waste, fraud, and abuse).

¹⁷ See Instructions to the Telecommunications Reporting Worksheet, FCC Form 499-A, February 2010 at pg. 1 (last visited July 1, 2010) (requiring all telecommunications carriers and VoIP providers to file Form 499-A annually). See also 47 CFR Sections 54.706, 54.711, and 54.713.

¹⁸ See, e.g., Billed Entity Applicant Reimbursement (BEAR) Form, FCC Form 472; Service Provider Annual Certification Form, FCC Form 473; and Service Provider Invoice Form, FCC Form 474 (last visited July 1, 2010)

Accordingly, Sunesys supports the Commission's recommendation that leased dark fiber is made available for funding as a priority one service, but believes that ultimately, it is more cost-efficient to have telecommunications carriers as the source of such leases.

V. Conclusion

WHEREFORE, for the foregoing reasons, Sunesys respectfully requests that the Commission adopt rules and policies for the e-rate program in a manner consistent with these Comments.

Respectfully submitted,

SUNESYS, LLC

A handwritten signature in black ink, reading "Katherine E. Barker Marshall". The signature is written in a cursive, flowing style.

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